

*Linda Glass*



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Litton Systems International, Inc., and  
Unisys Corporation

**File:** B-237166; B-237166.2

**Date:** February 8, 1990

Paul G. Dembling, Esq., Schnader, Harrison, Segal & Lewis, for the protester, Litton Systems International, Inc. Bernard Fried, Esq., for the protester, Unisys Corporation. James C. Devers III, Esq., Office of the General Counsel, Department of the Air Force, for the agency. Linda C. Glass, Esq., Michael Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Protester's proposal under modified two-step procurement was properly rejected as technically noncompliant where protester was given notice of potential areas where its proposal did not comply with essential requirements of the solicitation and failed to correct those areas.

2. The General Accounting Office will not question the exclusion of the protester's proposal as noncompliant where the proposal was reasonably found deficient with respect to essential requirements of the solicitation.

### DECISION

Litton Systems International, Inc., and Unisys Corporation protest the rejection of their technical proposals under invitation for bids (IFB) No. F19628-88-B-0002. The IFB was essentially a modified two-step sealed bid<sup>1/</sup> procurement

<sup>1/</sup> The two-step process is a hybrid method of procurement under which the step-one procedure is similar to a negotiated procurement in that the agency requests technical proposals and may hold discussions and request revised proposals, and step two is conducted by sealed bidding

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conducted by the Electronics System Division, Department of the Air Force, for the purpose of procuring the development of the Iceland Air Defense System (IADS).

We deny both protests.

The IADS is a proposed North Atlantic Treaty Organization (NATO) funded, ground-base, centrally controlled, air defense surveillance and control system. The system will provide long range detection of aircraft entering the Iceland military air defense identification zone and automated reporting of information between interfacing systems. Additionally, the IADS will maintain a "Recognized Air and Sea Picture" (display) to prevent tactical surprise by enemy air or sea attack, provide control of friendly aircraft, provide information for search and rescue, and provide pilot data to the Icelandic civil air traffic control center.

The Air Force, acting as an agent for NATO, issued the IFB on July 25, 1988, on a firm-fixed price basis. The IFB was for a NATO procurement conducted in accordance with NATO bidding procedures and the IFB so stated. The bidding procedure, as reflected in a NATO document incorporated by reference, was similar to the federal government's two-step sealed bidding procedures. Under the normal NATO bidding procedures, firms simultaneously submit separate technical and price proposals.<sup>2/</sup> Although consultation with bidders is encouraged in the interest of clarity, no alteration of proposals (including technical, financial and schedule changes) after the closing date are permissible. The United States, as host nation, sought and received NATO's approval to modify the NATO international competitive bidding two-step procedure for this procurement. Under the revised procedures, firms were allowed to submit one modification to their technical proposal package to correct potential

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1/(...continued)

among those firms that submitted acceptable proposals under step one. See Datron Sys., Inc., B-220423, B-220423.2, Mar. 18, 1986, 86-1 CPD ¶ 264. Under this procedure, bids are based on the technical proposals. Here, the offerors submitted separate technical and price proposals simultaneously; however, only the price proposals of the technically compliant offerors were to be subsequently evaluated.

2/ Although under the NATO procedures the step one submission is called a bid, here, in essence, offerors submitted technical and price proposals.

deficiencies identified during the government reviews and at the same time submit another price proposal reflecting any technical revisions. The modified proposals were to only address the areas of concern identified by the government.

The IFB provided for the notification to all offerors of the areas that appeared to require further clarification and an opportunity to correct deficient items and clarify others. However, offerors were also advised that further discussion or clarification was not contemplated after submission of revised proposals. The IFB advised that technical proposals would be evaluated to determine compliance with the requirements, i.e., the extent to which the proposal provided evidence that solicitation requirements would be met. Award was to be made to the responsible offeror whose proposal conformed to the solicitation, demonstrated that the offeror possessed the management, technical and facility capabilities necessary to manufacture, test, integrate and deliver a control reporting center, an alternate control reporting center/Iceland software support facility and all necessary communication, which were judged by an overall evaluation to be technically compliant and whose bid contained the lowest cost.

After issuance of the solicitation, the Air Force held a bidder's conference to respond to numerous questions concerning both the technical requirements and the procurement procedures. Eight proposals were received by the closing date of January 11, 1989. Based on initial evaluations, all firms were found to have potential areas of noncompliance. In accordance with the modified international competitive bidding procedures, written discussions were initiated with all offerors by letters dated April 13, 1989, which identified potential areas of noncompliance. Specifically, the notice contained two sets of clarification requests. One set of clarification requests indicated areas of potential noncompliance, and offerors were urged to carefully prepare response because inadequate responses could result in a noncompliant determination. The second set of clarification requests did not require a detailed response but merely requested a statement as to whether the government's interpretation was correct or, if not, the correct interpretation. Offerors were advised that this was their final opportunity to insure the acceptability of their proposals.

The responses to the clarification requests were received from all offerors and together with the information contained in the original proposals, were evaluated to determine each offerors' technical acceptability. Five of

the eight offerors were determined to be technically non-compliant, and they were so notified by letter dated September 18, 1989. These protests followed.<sup>3/</sup>

The protesters generally argue that the Air Force evaluation of their technical proposals was arbitrary and unreasonable. The basic position of the protesters is that the Air Force improperly eliminated the firms from the competition for failure to meet specification requirements that were insignificant and easily correctable. The protesters also argue that the Air Force clarification requests did not clearly identify the alleged proposals deficiencies.

Generally, our review of an agency's technical evaluation under a two-step sealed bid procurement is limited to the question of whether the evaluation was reasonable. The contracting agency may reject a proposal under step one where the agency reasonably evaluates the proposal as not meeting essential requirements. Gichner Iron Works, Inc., B-230099, May 16, 1988, 88-1 CPD ¶ 459. In order to reject a proposal for technical deficiencies alone, however, the agency must find the proposal to be more than technically inferior--it must be unacceptable in relation to the agency's requirements, that is, its stated minimum needs. See A.R.E. Mfg. Co., Inc., B-224086, Oct. 6, 1986, 86-2 CPD ¶ 395.

#### LITTON PROTEST

Litton was determined to be noncompliant in six areas based on information contained in its initial technical proposal and its response to the clarification requests. Specifically, Litton's proposal was found deficient in the following areas: (1) data reduction; (2) display; (3) UHF radio; (4) cipher text filter; (5) tempest; and (6) software engineering prototype.

Litton maintains that the Air Force determination of non-compliance was based on trivial matters some of which were merely preference items, not requirements, and which were easily correctable. Litton contends that the six areas of technical noncompliance, for purposes of analysis, can be divided into three groupings; (1) mistake by the government; (2) mistake by Litton; and (3) imposition of design criteria not specified in the performance specification. Litton further argues that the Air Force's use of a single form of

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<sup>3/</sup> In addition to Litton and Unisys, the other firms which have been rejected have filed protests which are currently pending with our Office.

discussion/clarification requests unfairly masked the evaluator's actual problems with Litton's proposal and prevented Litton from discerning precisely which areas of its technical proposal needed correction and which merely needed clarification.

In response, the Air Force asserts that the government did not misinterpret Litton's proposal and that the technical deficiencies demonstrated a failure on the part of Litton to meet the requirements of the solicitation. Additionally, the Air Force maintains that the clarification requests sufficiently notified Litton of the areas deemed to be so significant that Litton's failure to adequately address them within the context of the total proposal might result in rejection of its proposal.

As noted above, the solicitation advised that the procurement was being conducted under NATO procedures which permitted only one opportunity to respond to clarification/discussion questions and provided that price revisions were limited to the technical changes. Proposal revisions are not normally permitted under the NATO procedures. In this case, the Air Force had obtained permission from NATO to permit proposal revisions. Under these procedures, we think that the Air Force's responsibility was to provide the offerors a reasonable opportunity to revise their proposals, not to engage in technical leveling or to permit offerors to rewrite the technical proposals. It remained the offerors' responsibility to establish their compliance with the technical requirements. We think Litton failed to do so.

Regarding data reduction, the solicitation specifically required that the data reduction function (a support computer software system function) be performed independent of and in parallel with the operational computer software system function. The specification was intended to ensure that mission critical software functions, that is, operational computer software functions, be performed independent of support or non-mission critical software functions. Litton admits that its design approach allowed for data reduction to operate in the same physical processor as the computer software system function, but argues that data reduction is prioritized so as to not interfere with mission critical software operations. In other words, in its proposed system, mission critical operations take precedent over support functions. Litton's design, which permits operation of both functions in the same processor using a priority system, did not satisfy the RFP requirement that data reduction be performed independent of and in parallel with the operational software function. Rather, the

proposal, as clarified, shows that the functions at times would have been operating concurrently on the same processor.

Litton argues that the Air Force in its clarification request simply asked for more information and did not identify the proposed Litton approach as a deficiency so that Litton could have changed it. The Air Force, in its clarification request concerning data reduction, stated the system requirement, summarized the approach proposed by Litton and asked Litton to describe how the requirement was satisfied by Litton's proposed design. Although the questions were called clarification requests and not deficiencies, we believe that the Air Force in fact identified an area in Litton's proposal that was considered to be deficient, communicated the problem to Litton, and afforded Litton the opportunity to revise its approach. In our view, the clarification request reasonably indicated the Air Force's belief that Litton's approach did not satisfy a specific system requirement. Litton, in response to the clarification request, merely confirmed the agency's initial evaluation that Litton's approach did not comply with the specifications. Litton has not shown that the Air Force evaluation concerning data reduction was unreasonable.

Regarding radio requirements, the solicitation required that "the UHF radio suite at each RRH [government provided radar facilities] contain an amplifier that produces a 17dB [decibel (degree of loudness)] enhancement." The Air Force states that Litton in its initial proposal did not provide sufficient information on the characteristics of the medium power amplifier and the transmitting antenna to determine how the required 17dB enhancement would be provided. Consequently, a clarification request was prepared to allow Litton to provide data on the proposed output level of its medium power amplifier. Litton's response indicated that Litton's proposed equipment would not meet the 17dB enhancement requirement, but instead indicated its equipment would produce 13dB. Litton, in its protest, acknowledges that its proposal as revised failed to demonstrate a 17dB enhancement. Litton argues that this, however, resulted from two mathematical errors made by members of its engineering team which was apparent on the face of Litton's response to the clarification request. Litton contends that it has never taken exception to the 17dB requirement. Since the record shows that Litton's own engineers missed this error and needed to use workpapers to locate the errors, we do not agree that the errors were so obvious. Also, Litton was given the opportunity, through a clarification request, to ensure that all calculations were complete and accurate. As previously stated, firms were warned to consider their

responses to clarification requests carefully for they would have only one chance to make their proposals compliant. Consequently, Litton, in our view, was properly found noncompliant with the requirement.

The specification also required equipment which processes both classified (RED) and unclassified (BLACK) information; equipment and installation of equipment were required to be such that a TEMPEST secure system was ensured.<sup>4/</sup> Under the solicitation, equipment within TEMPEST shielded facilities (constructed by the government) were to be installed in accordance with a pre-established agency security standard. Equipment external to a government provided TEMPEST facility, that is, located at remote facilities, were required to meet another standard, that is, the equipment itself was to be TEMPEST tested. The solicitation further listed a number of available equipment already verified by NATO as meeting the necessary standard. In response to a question posed by Litton during the pre-bid conference, the agency basically advised that all RED equipment was to be tested or selected from TEMPEST equipment verified by NATO as TEMPEST tested. Litton, in its proposal, instead of offering TEMPEST tested equipment at remote locations, offered to provide a shielded enclosure for its equipment at each remote facility. The agency explained that Litton's approach was rejected because a TEMPEST shielded enclosure would have been more difficult to install, maintain and verify at remote locations. The solicitation language and agency intent here, in our view, were clear. The requirement was for certain equipment to be TEMPEST tested and Litton's approach of providing non-TEMPEST approved equipment inside a shielded enclosure instead of providing TEMPEST-tested equipment simply did not comply with the requirement.

In our view, with regard to the technical requirements discussed above, the Air Force found that Litton did not meet these requirements and properly rejected the technical proposal after providing Litton the opportunity to demonstrate its compliance with these requirements. Moreover, we are not persuaded that the deficiencies contained in Litton's proposal regarding these requirements,

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<sup>4/</sup> TEMPEST shield is an enclosure that prevents electromagnetic radiation from escaping. It is a security requirement to prevent unauthorized persons from detecting such radiation and thereby reading the messages from the escaped radiation.

especially concerning TEMPEST and data reduction, were easily correctable without significant revisions to Litton's design.

#### UNISYS PROTEST

Unisys's proposal was found noncompliant in the following areas: (1) air defense; (2) interoperability; (3) software terminals; and (4) software data. Unisys contends that the Air Force improperly evaluated its proposal using undisclosed, unstated requirements or preconceived design preferences not documented in the solicitation. Unisys argues that face-to-face, open discussions between the Air Force and Unisys would have resolved any misunderstandings or misinterpretations.

In response, the Air Force maintains that its evaluation was reasonable and that the protester is merely expressing disagreement with the evaluation.

With respect to the air defense area, the solicitation required that in the transition state the secondary control center shall employ the standby data from the primary control center and digital radar data from the remote radar facilities to reproduce the "display" being presented at the primary control center. The transition state involved transferring mission operations from the primary control center to the secondary control center. The Air Force's evaluation of Unisys's initial proposal found it compliant with this requirement. However, Unisys's response to a related clarification request indicated to the Air Force that Unisys did not satisfy the requirement to use the radar data to generate the display while in the transition state. In this regard, Unisys indicated that certain radar data would not be used by the secondary control center for correlation processing or display until the transfer of mission mode is completed. The Air Force states that when a clarification response conflicted with the original technical proposal, the clarification response was considered as the most current position of the bidder and, thus, was substituted for that particular item in the original bid. Consequently, Unisys was determined to be noncompliant.

Unisys argues that the Air Force determination was based on the agency's misinterpretation of Unisys's response and goes to great lengths to explain that response in its protest submissions. However, based on Unisys's clarification statement, the agency reasonably could conclude that Unisys did not propose to reproduce the display at the secondary control center until transition was completed.



With respect to software design, the solicitation required firms to provide a description of the Ada-based Designed Language (ADL) which was to be employed for expressing preliminary and detailed design of the system software. The statement of work required that the contractor ensure that ADL shall be validated and compilable. The Air Force contends that the solicitation required the offerors to describe their ADL, demonstrating that it was validated and compilable ADL. Unisys maintains that ADL for expressing design was not required to be validated and compilable at the solicitation stage of the procurement but rather the solicitation language indicates the requirement was imposed as a contract requirement. Thus, while Unisys recognizes that the software design document shall be in validated ADL, it maintains that it was only required to be delivered during contract performance, not by proposal submission.

However, by clarification request, the Air Force specifically asked Unisys to describe how its ADL was validated and compilable. Thus, to the extent Unisys was unclear as to the Air Force's concern, it was specifically asked to describe whether its ADL was validated and compilable. However, Unisys failed in its response to provide the evaluators with an acceptable description. In our view, the agency reasonably found Unisys response to be noncompliant.

Finally, in the area of software terminals, the solicitation provided the following:

"a. Terminals shall be provided for CSCI [Computer Software Configuration Item] support, including terminals for testing with the ACRC [Alternate Control and Reporting Center] equipment and for other development and maintenance tasks at the ISSF [Iceland Software Support Facility]. Except for those terminals used specifically for testing with the ACRC equipment, all terminals for these other development and maintenance tasks shall be located within the ISSF and shall possess a graphics capability."

The Air Force states that this requirement is necessary so that Icelandic personnel are able to perform software maintenance tasks at the ISSF by using equipment located in the ISSF.

Unisys in its initial proposal specifically stated that "the ACRC equipment will be used for software maintenance support of ISSF activities." Moreover, Unisys's proposal did not indicate any software support equipment as being located in

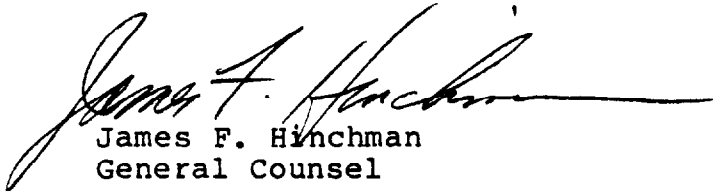
the ISSF. In this regard, during discussions, Unisys was specifically asked to describe how its design satisfied the solicitation requirement for software maintenance terminals in the ISSF. In response Unisys stated that "physically this equipment is located in the ACRC Ops Command Cab, ADPE Equipment Room, and Communications Frame and Equipment Room."

Unisys maintains that its approach involving the use of the operational universal console in the ACRC for software maintenance support was an innovative, cost-effective way to support the software maintenance activities and was an acceptable, permissible option within the requirements.

Contrary to the protester's argument, we believe the requirement was for terminals for software maintenance support to be physically located in the ISSF. By not providing the required equipment in the ISSF, Unisys took exception to an essential requirement. Consequently, we find the Air Force evaluation here reasonable.

In our view, the Air Force reasonably notified Unisys of its requirements, and we conclude that the agency properly rejected Unisys's proposal based on these instances of noncompliance discussed above. Further, we are not persuaded that these deficiencies would not require significant revisions to its design.

The protests are denied.



James F. Hinchman  
General Counsel